

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL W. WARD, H-26802,)	
)	
Petitioner,)	No. C 11-1714 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
TIM VIRGA, Acting Warden,)	(Docket # 2 & 4)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at California State Prison, Saramento, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Santa Clara County Superior Court. He also seeks appointment of counsel and leave to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Petitioner was convicted by a jury of possession of a firearm by a person convicted of a violent felony, possession of ammunition by a person prohibited from possessing a firearm and possession for sale of marijuana. The trial court also found true allegations that petitioner had suffered three prior strike convictions and had served two prior prison terms. On August 31, 2007, petitioner was sentenced to a total term of 52 years to life in state prison.

(unless an evidentiary hearing is required, the decision to appoint counsel in habeas corpus proceedings is within the discretion of the district court). Petitioner adequately presented his claims for relief in the petition and an order to show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no background in law, denial of appointment of counsel within discretion of district court where petitioner clearly presented issues in petition and accompanying memorandum). The court will appoint counsel on its own motion if an evidentiary hearing is later required. See Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary hearing is required).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (docket # 4) is GRANTED.
2. The clerk shall serve a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.
3. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

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1 If petitioner wishes to respond to the answer, he shall do so by filing a
2 traverse with the court and serving it on respondent within 30 days of his receipt
3 of the answer.

4 4. Respondent may file a motion to dismiss on procedural grounds in
5 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
6 Rules Governing Section 2254 Cases. If respondent files such a motion,
7 petitioner shall file with the court and serve on respondent an opposition or
8 statement of non-opposition within 30 days of receipt of the motion, and
9 respondent shall file with the court and serve on petitioner a reply within 15 days
10 of receipt of any opposition.

11 5. Petitioner is reminded that all communications with the court must
12 be served on respondent by mailing a true copy of the document to respondent's
13 counsel. Petitioner must also keep the court and all parties informed of any
14 change of address.

15 SO ORDERED.

16 DATED: May 6, 2011

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19 CHARLES R. BREYER
20 United States District Judge
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